

**OPPOSE H.R. 5:
LEGISLATION TO LIMIT THE RIGHTS OF INJURED PATIENTS**

July 25, 2005

Dear Representative:

We are writing to urge you to oppose H.R. 5, legislation that would cap damages awarded to patients who have been injured by medical negligence. **Taking compensation away from victims of medical malpractice will do nothing to help doctors obtain affordable malpractice insurance.** What is more, the legislation will do nothing to improve access to affordable, quality medical care.

If Congress enacts limitations on the legal rights of patients, the biggest winner will be the medical malpractice insurance industry, which has already seen its profits go up dramatically in recent years. The losers will be innocent victims with devastating injuries due to medical negligence.

A recent study by former Missouri Insurance Commissioner Jay Angoff provides the strongest evidence yet that no relationship exists between medical malpractice insurance premiums and payouts to victims. The study, entitled *Falling Claims and Rising Premiums in the Medical Malpractice Insurance Industry*, analyzed for the first time Annual Statements supplied to state insurance departments under oath by the nation's top medical malpractice insurers. The study found:

- *Over the last five years, premiums increased 120% while net claims payments rose by only 5.7%.* In other words, premiums increased at a rate 21 times that of malpractice payouts.
- *Some malpractice insurers substantially increased their premiums while both their claims payments and their projected future claims payments were decreasing.*
- *The leading malpractice insurers have increased their surplus by more than a third in only three years.* Surplus is the extra cushion an insurance company accumulates over and above the amount it has set aside to pay its estimated future claims.

Just last week, the Wisconsin Supreme Court ruled that the state's cap on pain and suffering awards in medical malpractice cases violates the equal protection guarantees of the state constitution. The court found that, "... the \$350,000 cap on non-economic damages in medical malpractice cases is not rationally related to the legislative objective of lowering medical malpractice premiums." We agree.

Very simply, legislation to place limits on medical malpractice liability hurts patients by restricting their rights to hold physicians, hospitals, insurance companies,

HMOs, and drug and medical device manufacturers accountable for injuries or death resulting from negligent care. The bill will do nothing to make healthcare or medical malpractice insurance more available or more affordable.

The provisions of the bill include:

- **An arbitrary "one size fits all" \$250,000 cap on pain and suffering damages.** The hard cap on damages applies no matter how egregious the negligence or severe the injury.

Pain and suffering damages compensate patients for very real injuries, such as loss of fertility or mobility, excruciating pain, permanent and severe disfigurement, or the loss of a spouse or child. Caps on these so-called "noneconomic" damages discriminate against low-wage earners and people who do not work at all, such as children, senior citizens, and homemakers. In addition, as the Wisconsin Supreme Court noted, "plaintiffs with the most severe injuries appear to be at the highest risk for inadequate compensation. Hence, the worst off may suffer a kind of 'double jeopardy' under caps."

- **Protections for HMOs, nursing homes and manufacturers of drugs and medical devices.** The bill does not apply only to doctors. It also caps damages of victims of bad faith insurance claims, nursing home abuse and defective drugs and medical devices. The bill also shields manufacturers of drugs and devices from punitive damages as long as they have received FDA approval. After recent revelations about FDA's flawed oversight of Vioxx and other pharmaceuticals, it would be foolish to allow reckless companies to use FDA approval as an excuse for their bad behavior. Furthermore, these protections have nothing to do with the insurance crisis facing physicians.
- **Restrictive statute of limitations.** Under the bill, a lawsuit would have to be filed no later than one year from the date the injury was discovered or should have been discovered, but in no case later than three years after the "manifestation" of injury. This unfair rule is much more restrictive than many state rules, and would arbitrarily cut off meritorious claims involving diseases or injuries with long incubation periods that may be difficult to identify, such as AIDS.
- **Elimination of joint liability for all damages.** Proponents of H.R. 5 claim that the bill does not limit the out-of-pocket losses of injured patients. However, by eliminating joint liability for all damages, the bill will under-

compensate injured patients whenever one or more defendants are unable to pay their share. This overturns many state laws, based on centuries of common law jurisprudence, that place the burden of an insolvent defendant on the other negligent parties instead of shortchanging the innocent victim.

Dozens of courageous medical malpractice victims and their families across the country have become tireless advocates for public policy changes to improve the quality of medical care and weed out consistently negligent physicians, nursing home providers, and other health care providers to help ensure that what happened to them does not happen to others. These individuals and families are united in their opposition to liability limits that would harm victims and weaken the deterrence against health care providers who are a danger to their patients. Limits on the rights of injured patients will further victimize them and their families, and it will help neither patients nor health care providers. The real beneficiaries will be insurance companies, HMOs, nursing homes, and drug and medical device companies. On behalf of our organizations, and the millions of individuals we represent, please oppose any effort to limit victims' rights.

Sincerely,

Alliance for Justice

Center for Justice & Democracy

Consumer Federation of America

Consumers Union

National Citizens' Coalition for Nursing Home Reform

Public Citizen

U.S. Public Interest Research Group

USAction

If you have any questions or want more information, please feel free to contact

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|--------------------|-------------------------------------|----------------|
| • Sandy Brantley | Alliance for Justice | (202) 822-6070 |
| • Pamela Gilbert | Center for Justice & Democracy | (202) 789-3960 |
| • Rachel Weintraub | Consumer Federation of America | (202) 387-6121 |
| • Sally Greenberg | Consumers Union | (202) 462-6262 |
| • Janet Wells | NCCNHR | (202) 332-2275 |
| • Jillian Aldebron | Public Citizen | (202) 546-4996 |
| • Lindsey Johnson | U.S. Public Interest Research Group | (202) 546-9707 |
| • Helen Gonzalez | USAction | (202) 624-1727 |